

(SEE RULE 102 (1))

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

T.A NO. – 05/2017

**{ARISING OUT OF W.P. (S) No. 6325 OF 2015 WITH I.A. NO.-
7933 OF 2016 AT HON'BLE HIGH COURT OF JHARKHAND AT RANCHI}**

DATED : 20th DECEMBER, 2017

CORAM

HON'BLE JUSTICE MR. V.S. RAVI, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S) Kalawati Devi, w/o Late Naik Ram Narain Ram
(ex No. 6260039)
Resident at Kailash Nagar, P.O. - Chas, P.S. – Chas
District – Bokao (Jharkhand)

-versus-

RESPONDENT(S)

1. The Union of India through the Secretary
Government of India,
Ministry of Defence, South Block,
D.H.Q. P.O. New Delhi – 110 011
2. The Officer-in-Charge
Signals Records, Post Bag No. 05
PO & PS – Jabalpur (Madhya Pradesh)
3. Station Commander
Station Headquarters(Near Booty More)
PO – Hotwar, PS – Sadar, Dist – Ranchi (Jharkhand)

Legal Practitioners

For the petitioner (s) Mr. Pradeep Kr. Nayak

For the respondents Mr. Soumik Chatterjee, Ld. Advocate
Assisted by Major Deepali, OIC, Legal Cell (Army),
HQ Bengal Area, Alipore, Kolkata – 2000 027
and Major LD Bhuiyan, Representative of
OIC, Signals Records, Jabalpur (MP).

ORDER**PER HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)**

1. This Transfer Application being No. TA 05/2017 arises out of W.P (S) 6325/2014 filed in the Hon'ble High Court of Jharkhand at Ranchi.
2. In the Writ Application, the petitioner has sought for direction (s) or a writ in nature of mandamus commanding upon the Respondents to pay her family pension along with arrears of pension with interest from 28.02.2014 (after the death of her husband – Ex No. 6260039 Naik Ram Narain Ram. The case in brief is as follows : -
3. The applicant, Ex No. 6260039 Naik Ram Narain Ram was enrolled in the year 1951 and he served till 12.10.1966. He was also kept on reserve from 01.01.1966 to 17.01.1969; which was a compulsory retention in service. It is indisputable that the said Naik was receiving service pension after his discharge. The applicant who claims to be the second wife of Late Naik Ram Narain Ram has stated that after his death she has received no family pension what so ever. It is seen from the original records that Ex Naik Ram Narain Ram was married to Smt. Munki Devi whom he divorced on 31.01.1994.
4. As per the records, he had married with the applicant on 31.01.1980. Accordingly, the Respondents have denied family pension to the applicant on the grounds that as per the guidelines plural marriage contracted by any Army personnel / Government Servants, no pension is permissible and in the case of plural marriage as per Army Order 51/1980, only the legally wedded widow is entitled to Family Pension with children of it illegally wedded wife also being entitled family pension. It was vehemently argued by the respondents that no family pension could, therefore, be granted to the applicant.
5. Perusal of records it very clearly indicates that a Daily Order Part – II dated 27.09.2004 was signed by an officer of the Signals Records; which is reproduced as under : -

RESTRICTED

SUS No. : 1725005
 UNIT : SIGNALS RECORDS
 SATION : JABALPUR (MP)
 (LAST PART II ORDER NO : NER/404/2004 DATED : / /09/2004)

PART II ORDER : NER/405/2004
 DATED : 27/09/2004
 SHEET NO : ONE OF ONE

Ser No.	Army No, Rank and Name	Description	Date	Details of casualty in clear
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NE PERSONNEL

- | | | | | |
|----|------------------------------------|---------------|------------|---|
| 1. | 62500398 Ex Naik
RAM NARAIN RAM | Divorce | 31.01.1994 | Divorced to Smt. Marki Devi. Court Order kept with the Sheet Roll of the individual. |
| 2. | 6260039 Ex Naik
RAM NARAIN RAM | Marriage | 31.01.1980 | Married to Kalavati Devi S/O Rajdee Sah at Bihiya. Date of Birth of his wife is 20-02-1958 as per Hindu Rites. Marriage affidavit kept with the Sheet Roll of the individual. |
| 3. | 6260039 Ex Naik
RAM NARAIN RAM | Change of NOK | 31.01.1980 | NOK changed to his wife Smt. Kalavati Devi. Declaration form kept with the Sheet Roll of the individual. |
| 4. | 6260039 Ex Naik
RAM NARAIN RAM | NOK for FP | 31.01.1980 | NOK changed to Smt. Kalavati Devi for family pension. Nomination form kept with the Sheet Roll of the individual. |

Sd/ - xx x x x x x x x x x x

(MA Arjuna)

Capt

Records Officer

Typed by : Naik SP Ramulu Sd/x x x x x x
 Checked by : Nb Sub R Singh Sd/ x x x xx x
 Distribution :
 1. Auto Cell - 1
 2. Lib Coord - 1
 3. FP JN - 1

6. It is apparent from the above DO Part II, that Ex No. 6260039 Late Naik Ram Narain Ram married the applicant on 31.01.1980 and he divorced his first wife Smt. Manki Devi on 31.01.1994. The Court Order of the divorce decree was filed with the Sheet Roll of the individual. It is evident that during the subsistence of his first marriage, Ex Naik Ram Narain Ram got married to the applicant. However, after the divorce from his first wife, only the current marriage with the applicant is subsisting. Ld. Counsel for the applicant also stated that the first wife Smt. Manki Devi has since expired. There is no doubt that the said Ex Naik Ram Narain Ram had contracted the plural marriage during his life time. This was highly irregular. Be that as it may, the Army authorities themselves have accepted the status of Smt. Kalawati Devi as the NOK (Next of Kin) and also published the DO Pt II to the effect of her being the Next of Kin for Family Pension.

7. That being the case, since Smt Kalawati Devi is the legally wedded wife of Ex Naik Ram Narain Ram and also the Next of Kin for Family Pension, recognized by the Army authorities, family pension should not be denied to the old widow because of irregularity committed by her husband who is since deceased.

8. In view of the peculiar circumstances of the case, we hereby direct the authorities concerned to pay family pension to the applicant (Smt. Kalawati Devi) from the next date of the death her husband which had occurred on 28.02.2014 till her life time.

9. Ld. Counsel and OIC Legal Cell (Army), HQ Bengal Area alongwith Major LD Bhuiyan (Appearing from the OIC Signals Records) appearing for the respondents has made an oral appeal for grant of leave to appeal to the Hon'ble Supreme Court U/S 31 of the AFT Act, 2007. Since the order does not involve any question of law having general public importance, the prayer for leave to appeal to the Hon'ble Supreme Court stands rejected.

10. The arrears of family pension to be paid to the applicant (Smt. Kalawati Devi) by the respondents within a period of 4 months.

11. The application is allowed.

12. Respondents are further directed to submit a compliance report on 30 April 2018. List the case on 30 April, 2018.

13. Let a plain copy of this order be supplied by the Tribunal Officer to all the concerned parties after observance of all due formalities.

14. Registry is directed to return all the original records submitted by the representative of the OIC, Signals Records, Jabalpur on proper receipt.

15. No order as to cost.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(MR. JUSTICE V.S. RAVI)
MEMBER (JUDICIAL)

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